IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

WEALTH TAX REFERENCE No 26 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF WEALTH-TAX

Versus

BAKUBHAI M CHARITABLE TRUST

Appearance:
MR MANISH R BHATT for Petitioner
MR RK PATEL for Respondent No. 1

CORAM : MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE M.S.SHAH

Date of decision: 18/01/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this reference at the instance of the Revenue,

the following question has been referred to us in respect of assessment years 1973-74 to 1975-76 :-

Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in holding that provisions of Sec.21A of the Wealth Tax Act were not applicable and, therefore, reopening made under section 17 of the Act was illegal ?

2. The respondent - Bakubhai Mansukhbhai Charitable Trust, Ahmedabad was recognized as a charitable trust under section 5 of the Wealth Tax Act("the Act" for brevity) in respect of the aforesaid assessment years. However, the Assessing Officer reopened the matter under section 17 read with section 21A of the Act and held that the respondent was not entitled to get the benefits as a Charitable Trust under section-5 of the Act. In the appeal,the Appellate Assistant Commissioner confirmed the view taken by the Wealth Tax Officer and held that the assessee trust was never a public charitable trust and, therefore, the Wealth Tax Officer was justified in assuming jurisdiction under section 17(1) of the Act. The respondent - assessee carried the matter in second appeal before the Tribunal. The contention of the assessee that since it was recognized as a charitable trust in the Income-Tax matters, it should be treated as a charitable trust under the Wealth Tax Act also came to be accepted by the Tribunal. The Tribunal accordingly set aside the orders of the appellate Assistant Commissioner and the Wealth Tax Officer with a direction to frame the assessment upholding the claim of the assessee on the basis that the assessee was entitled to exemption as a charitable trust.

3. We have heard Mr.B. B. Naik, learned counsel for the revenue and Mr.R. K. Patel, learned counsel for the respondent trust. The learned counsel for the revenue is not in a position to dispute the fact that respondent trust has been held to be a public charitable trust under Section 11 of the Income Tax Act, 1961 as per the decisions of this Court in Income Tax Reference No.288 of 1985 decided on 6th November, 2000 and Income Tax Reference Nos.22 and 23 of 2001 decided on 16th January, 2001. It is required to be noted that the Wealth Tax Officer sought to reopen the matter under section 17 read with section 21A of the Wealth Tax Act on the ground that any part of the property of the charitable trust was used or applied, directly or indirectly for the benefit of the persons referred to in sub section (3) of section 13 of the Income Tax Act. It

is required to be noted that the Income Tax Officer had decided against the respondent trust and had held that provisions of section 13(2)(h) and section 13(a) of the Income Tax Act, 1961 were not applicable. The aforesaid contentions of the revenue were negatived by the Income Tax Tribunal as well as by this Court. In the aforesaid references, the respondent trust has held to be a charitable trust. In view of the aforesaid statutory scheme of the Wealth Tax Act read with the Income Tax Act, it must be held that the Wealth Tax Officer was not justified in initiating proceedings under section 17 read with section 21A of the Wealth Tax Act.

4. For the aforesaid reasons, we hold that the Tribunal was justified in holding that the provisions of section 21A of the Act were not applicable and, therefore, reopening made under section 17 of the Act was illegal.

We accordingly answer the question in the affirmative i.e. in favour of the assessee and against the Revenue.

This reference is accordingly disposed of with no order as to costs.

(J.M.Panchal,J.)

(M.S.Shah,J.)

(vrp)*